

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 04/24/02 Item: 4.d.

File Number
TR 02-020

Application Type
Appeal of the Director's decision to deny a
Tree Removal Permit Denial

Council District
06

Planning Area
Willow Glen

Assessor's Parcel Number(s)
439-06-032

PROJECT DESCRIPTION:

Completed by: Anastazia Aziz

Location: 1060 Malone Road

Gross Acreage: 0.18

Net Acreage: 0.18

Net Density: N/A

Existing Zoning: R-1-8 Residence

Existing Use: Single-family attached residence

Proposed Zoning: No change

Proposed Use: No change

GENERAL PLAN

Completed by: AA

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
[x] No [x] See Analysis and
Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AA

North: Single-family residential

R-1-8 Residence

East: Single-family residential

R-1-8 Residence

South: Single-family residential

R-1-8 Residence

West: Single-family residential

R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: AA

☐ Environmental Impact Report found complete on

☒ Exempt

☐ Negative Declaration circulated on

☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AA

Annexation Title: South Willow Glen No. 5

Date: 07/15/1949

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval

Approved by: _____

☐ Approval with Conditions

Date: _____

☒ Action

☒ Uphold Director's Decision

☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Mary E. Bates

Francine Wein

1060 Malone Road

6935 Azalea Drive

San Jose CA 95125

San Jose, CA 95120

AA

Department of Public Works

None received.

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

Superior Court of California Stipulation and Order regarding removal of tree dated October 12, 2001.

Arborist reports by Arbor Care dated June 28, 2000, Arbor Resources dated August 16, 2000, TruGreen Landcare dated September 14, 2000, Tree Decisions dated August 8, 2001.

March 27, 2002 letter from Francine Wein with surveyor's report by Mission Engineers dated August 22, 2001, Willow Glen Resident article entitled *City arborist has scheduled hearing on troublesome trees for Sept. 6*, August 23, 2000, photographs; April 8, 2001 (received April 11, 2002) letter from Betty Bates with State Farm General Insurance payments date 11-21-01.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On February 22, 2002, the co-applicants representing 1060 Malone Road and 1054 Malone Road submitted an application to allow removal of one Douglas Fir tree approximately 100 inches in circumference located at 1060 Malone Road. A Tree Removal Permit is required under Chapter 13 of the Municipal Code for the removal of any tree located on private property that has a trunk circumference of 56 inches or greater measured two feet above the surrounding grade.

The subject site is developed with a single-family attached residence that was built in 1939. The tree in question is located within the front yard of 1060 Malone Road and has grown over the property line between 1060 and 1054 Malone Road, extending approximately 2 inches into the front yard of 1054 Malone Road. The application states that the tree has caused damage to the driveway located at 1054 Malone Road. Photographs of a small portion of uplifted driveway were submitted with the application (see attached). No physical evidence that the tree is in a hazardous condition is apparent from the photographs submitted with the application. The tree growth appears to be normal and healthy.

This tree has been the subject of litigation between the two property owners. A stipulation and order by the Superior Court of California regarding removal of the subject tree dated October 12, 2001 was included with the application. The Court orders "pursuant to the terms of the Settlement Agreement negotiated between the parties in a judicially supervised Settlement Conference on September 26, 2002, the Douglas Fir tree located on the boundary between plaintiffs' real property at 1054 Malone Road, San Jose, California, and defendant's real property located at 1060 Malone Road, San Jose, California, shall be removed, the cost of which removal shall be borne by the plaintiffs." The Court Order is binding on the property owners but does not limit the City's ability to regulate the removal of trees through the Tree Removal Permit process. Based on staff's review of the application and in light of the required tree removal findings, the Director of Planning denied the permit request on March 27, 2002.

On April 4, 2002, Ms. Wein, co-owner of 1054 Malone Road, appealed the Director's decision to deny the subject Tree removal permit.

PUBLIC OUTREACH

Notices of the Director's Hearing and Planning Commission public hearing were distributed to the owners and tenants of all properties located within 300 feet of the project site. Staff has been available to discuss the proposed tree removal with members of the public.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA).

GENERAL PLAN CONFORMANCE

The project site has a designation of *Medium Low Density Residential (8.0 DU/AC)* on the San Jose 2020 General Plan Land Use/Transportation Diagram. The existing single-family residence is consistent with this designation.

The proposed removal is inconsistent with the General Plan's Urban Forest Policy. The General Plan's Urban Forest Goal is to "preserve, protect, and increase plantings of urban trees within the City." The Urban Forest Policy states that any adverse affect on the health and longevity of native oaks, ordinance sized or other significant trees should be avoided through appropriate design measures and construction practices. Removal of the subject tree would conflict with the Urban Forest Goal, in that:

1. The Director of Planning concluded that the Tree Removal Controls findings identified in Chapter 13.32, cannot be made for this project, and
2. Reasonable driveway design measures and alternatives to removal of the tree have not been fully explored.

ANALYSIS

Appeal

The appellant, Ms. Wein, has cited the following reasons for appealing the Director's decision to deny the subject Tree Removal Permit:

- The tree will continue to damage 1054 Malone Road; and,
- Any work done to the driveway at 1054 Malone Road will compromise the tree.

Ms. Wein submitted correspondence including a plat survey and two arborist assessments, one by TruGreen Landcare dated September 14, 2000, and a second by Arbor Care dated June 28, 2000 regarding removal of the subject tree.

The survey plan by Mission Engineering indicates that 2 inches of the Douglas Fir is located on 1054 Malone Road and that the remainder of the tree is located on 1060 Malone Road (see attached).

The arborist report prepared by TruGreen Landcare on September 14, 2002, concurs with the August 7, 2000 report by Arbor Resources, stating specifically that installation of a new driveway of the same construction in the same location as the original would require severance of the root flare and portions of the trunk that would significantly reduce the stability and health of the tree (see attached). However, the report prepared by Arbor Care on June 28, 2000 states that approximately 25-30% of root loss will occur upon driveway installation, and although some stability could be comprised due to root loss, would Arbor Care would not consider this tree to be a hazard (see attached).

Purpose of Tree Removal Ordinance and Required Findings

The purpose of the Tree Removal Permit process is "to promote the health, safety, and welfare of the city by controlling the removal of trees in the city, for wanton destruction of trees detracts from the scenic beauty of the city, causes erosion of topsoil, creates flood hazard and risk of landslides, reduces property values, increases the cost of construction and maintenance of draining systems through the increased flow and diversion of surface waters, and eliminates one of the prime oxygen producers and prime air purification systems in this area." [Municipal Code, Section 13.32.010].

In order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following Tree Removal Control findings:

1. That the condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structure, and/or interference with utility services, is such that public health or safety requires its removal;

2. That the location of the tree with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question; and,
3. That its removal would not significantly frustrate the purposes of the chapter as set forth in Section 13.32.010.

Analysis of Required Findings for Tree Removal

1. The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structure, and/or interference with utility services, is such that public health or safety requires its removal

Planning staff conducted a site visit on March 14, 2002. Staff observed the driveway at 1054 Malone Road is approximately 15 feet in width as shown on the site plan submitted with the application. Staff observed the damage to the driveway and noted the tree appeared to be in good health and structure and did not interfere with utilities. There is no landscape strip between 1054 and 1060 Malone Road. Title 20 requires single-family residence driveways be a minimum width of 10 feet.

The arborist reports by Arbor Care dated June 28, 2000, Arbor Resources dated August 16, 2000, TruGreen Landcare dated September 14, 2000, and Tree Decisions dated August 8, 2001, all state the tree is in good health and structure and does not exhibit any signs of disease.

Based on the staff site visit, and the four arborist reports, the apparent condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures and/or interference with utility services does not pose a public health or safety threat requiring its removal.

2. That the location of the tree with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question.

A certified arborist report by Arbor Resources dated August 16, 2000 was submitted with the initial tree removal permit application (see attached). The report rates the tree health and structure as good. The report states that approximately 6 inches of the trunk base has grown onto 1054 Malone Road lifted a 2.5 by 6 foot section of concrete upward by 1.5 feet and that as the tree continues to grow, further damage to the driveway can be expected. The report recommends that if the tree is to be retained, alternative measures for constructing the driveway, such as a small cutout which was outside the trunk area by at least four feet, to accommodate the tree should be employed. The report stated that to install a new driveway of the same construction type where it was previously located, the root flare and part of the trunk would require severance which would impact the tree and reduce the stability and long-term health of the tree. The report recommended removal of the tree if the driveway is to be constructed of solid concrete material in the same location.

On April 11, 2002 Ms. Bates, owner of 1060 Malone Road, submitted a letter with two State Farm insurance payments totaling \$18,000 which were paid to the co-owners of 1054 Malone Road for driveway repairs. Ms. Bates' states the amount paid was based upon replacing the driveway with pavers in order to save the health of the Douglas Fir Tree. Additionally, Ms. Bates submitted an arborist report by Tree Decisions dated August 8, 2001.

The arborist report by Tree Decisions cites the following four driveway modifications that may be implemented to preserve the tree:

- a. Minor rerouting of the driveway to allow for coexistence with the established Douglas Fir.
- b. Proper installation of a crushable base material underneath concrete and a three-inch slab of polyurethane foam which will allow future root expansion without raising the concrete.
- c. Replacement of the driveway near fir tree with permeable pavers approximately 3 and 2/8 inches thick.
- d. Driveway construction by pouring concrete sections separated by ½ inch-thick felt-strip expansion joints, which will release the pressure on other poured sections.

The report concludes that with practical modifications to the driveway at 1054 Malone Road, both the tree

and driveway can successfully coexist for decades.

The subject tree does not unreasonably restrict economic development of 1054 Malone Drive. Two arborists cited five different alternatives to modify the driveway, which would preserve the tree and meet the driveway width requirements of Title 20. The owners of the property with the driveway damage have received compensation specifically to reconstruct a type of driveway appropriate next to this tree. Therefore, it appears there are many options to reconstruct the existing concrete driveway and minimize or prevent further damage to the driveway at 1054 Malone Road and preserve the Douglas Fir tree.

3. That its removal would not significantly frustrate the purposes of the chapter as set forth in Section 13.32.010.

The wanton destruction of the subject Douglas Fir tree would detract from the scenic beauty of Malone Road and the greater city. The subject tree is located in the front yard of 1060 Malone Road setback approximately 20 feet from the front property line. The tree is also situate at the terminus of the T intersection of Malone Road and Lovoi Way. The tree is one of the larger trees on Malone Road and is visible from the public realm. The Douglas Fir contributes to the scenic beauty of Malone Road and the greater City of San Jose.

Removal of the subject tree may cause erosion of topsoil and will increase the cost of construction and maintenance of draining systems through the increased flow and diversion of surface waters. Removal of the tree and replacing the concrete driveway as it existed would increase surface water runoff. The alternative driveway modifications would increase natural drainage and divert surface runoff and minimize topsoil erosion.

Lastly, removal of the tree would eliminate the tree's contribution to oxygen production and air purification systems in this area. The 70-foot height, good structure and health, and full canopy indicate the tree is active contributor to oxygen and air purification. Removal of the mature tree and replacement with a smaller specimen would reduce the capacity of oxygen generation and air purification of the City's urban forest. Based on staff's site visit and the arborist reports, removal of the tree would frustrate the purpose of the ordinance because there is no apparent cause for removal of the tree, and the required findings cannot be made for removal.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to deny the requested Tree Removal Permit for the following reasons:

1. The findings required in Section 13.32, Tree Removal Controls, cannot be made to recommend approval of the proposed tree removal.
2. Removal of the subject tree would not be in conformance with the *General Plan's Urban Forest Goal*.
3. The applicant submitted four arborist reports that state that the tree is healthy and in good condition. Three reports specifically indicate that the driveway could be reconstructed to accommodate the tree.
4. The applicant has not submitted any substantial evidence to establish that reconstructing the driveway (or other possible measures short of removal) in such a way as to accommodate the tree would not be a reasonable alternative to removal, and has received compensation to allow for such reconstruction.

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